

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 47 Crustaceans

**SPONSOR(S):** Agriculture & Natural Resources Subcommittee; Raschein and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 194

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Renner	Blalock
2) Criminal Justice Subcommittee			
3) Agriculture & Natural Resources Appropriations Subcommittee			
4) State Affairs Committee			

### SUMMARY ANALYSIS

In order to take spiny lobsters commercially, a fisherman must possess a valid Saltwater Products License and a valid Restricted Species endorsement, as well as either a spiny lobster endorsement or a lobster dive endorsement. Spiny lobsters may be harvested recreationally by anyone who has a valid recreational saltwater fishing license.

Currently, any person, firm, or corporation who violates any provision of chapter 379, F.S., or any rule of the Florida Fish and Wildlife Conservation Commission (FWC) relating to the conservation of marine resources, is punished:

- Upon a first conviction, by imprisonment for not more than 60 days or by a fine of not less than \$100 or more than \$500, or by both such fine and imprisonment.
- On a second or subsequent conviction within 12 months, by imprisonment for not more than 6 months or by a fine of not less than \$250 or more than \$1,000, or by both such fine and imprisonment.

A court can assess additional penalties against any commercial harvester convicted of major violations. For a violation involving more than 100 illegal blue crabs, spiny lobsters, or stone crabs, an additional penalty of \$10 for each illegal blue crab, spiny lobster, stone crab, or part thereof is imposed. In addition, the FWC has the discretion to constitute the illegal taking of spiny lobsters as a separate and distinct violation or as one violation no matter how many spiny lobsters have been taken.

The bill prohibits the possession of spiny lobster during the closed season or, while on the water, being in possession of spiny lobster tails that have been wrung or separated from the body, unless the possession is allowed by FWC rule. Any person, firm, or corporation that violates this provision is subject to the following penalties:

- **A first violation-** misdemeanor of the second degree. If the violating involves 25 or more lobster, the violation is a misdemeanor of the first degree.
- **A second violation-** misdemeanor of the first degree and such person is subject to a suspension of all license privileges for a period not to exceed 90 days.
- **A third violation-** misdemeanor of the first degree with a mandatory minimum term of imprisonment of 6 months. The violator may be assessed a civil penalty of up to \$2,500 and is subject to a suspension of all license privileges for a period not to exceed 6 months.
- **A third violation within 1 year after a second violation-** felony of the third degree with a mandatory minimum term of imprisonment of 1 year. The violator must be assessed a civil penalty of \$5,000 and all license privileges must be permanently revoked.
- **A fourth or subsequent violation-** felony of the third degree with a mandatory minimum term of imprisonment of 1 year. The violator must be assessed a civil penalty of \$5,000 and all license privileges must be permanently revoked.

The bill may have a negative fiscal impact on state courts and a negative prison bed impact on the Department of Corrections because of the increased prison terms established in the bill. The bill has a potentially insignificant negative impact on commercial and recreational violators who commit multiple offenses.

### FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0047a.ANRS

DATE: 1/22/2014

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### **Background**

The spiny lobster fishery has brought in a dockside value of \$133.6 million over the past five years. One hundred percent of spiny lobsters commercially harvested in the U.S. come from Florida, with approximately 90 percent harvested in the Florida Keys.

Spiny lobster fishing is managed by the FWC. Chapter 379, F.S., imposes regulations to ensure the long-term sustainability of the spiny lobster, including minimum size limits, closed seasons and areas, gear restrictions, trap specifications, and a lobster trap certificate program.

#### Saltwater Products License (SPL)

The spiny lobster can be harvested both recreationally and commercially in Florida. Spiny lobsters may be harvested recreationally by anyone who has a valid recreational saltwater fishing license. The current recreational bag limit (the number of a species a person may legally harvest) for spiny lobster is six per person, per day during the regular recreational season, which runs from August 6 to March 31. The special spiny lobster sport season occurs annually on the last consecutive Wednesday and Thursday of July. Recreational fishermen may still only harvest six spiny lobsters per day in Monroe County or Biscayne National Park, but may harvest 12 spiny lobsters per day elsewhere. Recreational spiny lobster fishermen are not permitted to use traps to harvest spiny lobsters.<sup>1</sup> Recreational spiny lobster fishermen must possess a recreational saltwater fishing license and a spiny lobster permit. The license and permit fees are annual, unless otherwise specified. The fees (including a \$1.50 tax collector fee authorized by s. 379.352, F.S.) are as follows:<sup>2</sup>

<b>Resident Saltwater Fishing Licenses</b>	
<b>Type of License</b>	<b>Fee</b>
Annual Saltwater Fishing License	\$17.00
Youth Saltwater Fishing License (Optional for children under the age of 16 and valid until 17th birthday - a fishing license is not required until age 16)	\$17.00
5-Year Saltwater Fishing License	\$79.00
Saltwater/Freshwater Fishing License Combo	\$32.50
Saltwater/Freshwater Fishing/Hunting License Combo	\$48.00
Saltwater Shoreline License (Not valid from a vessel, from a shore reached by vessel, or if swimming or diving, and not required if you have any other valid resident saltwater fishing license listed here)	Free
Gold Sportsman's License (Includes saltwater fishing, hunting, and freshwater fishing licenses; and snook, lobster, wildlife management area, archery, muzzleloading gun, crossbow, deer, turkey, and Florida waterfowl permits)	\$100.00
Youth Gold Sportsman's License (Optional for children under the age of 16 and valid until 17th birthday - a fishing license is not required until age 16; hunter safety certificate required; includes same licenses and permits as Gold Sportsman's License)	\$100.00
5-Year Gold Sportsman's License (Includes saltwater fishing, hunting, and	\$494.00

<sup>1</sup> FWC 2014 analysis. On file with staff.

<sup>2</sup> Section 379.354, F.S. A person who purchases any of these licenses from a general sales agent of the commission will also pay \$0.50 to the agent. Those purchasing online or by telephone pay a convenience fee of \$2.25 plus 2 ½ percent of the total purchase for online license purchases, and a fee of \$3.25 plus 2 ½ percent of the total purchase for telephone license purchases.

freshwater fishing licenses; and snook, lobster, wildlife management area, archery, muzzleloading gun, crossbow, deer, turkey, and Florida waterfowl permits)	
Military Gold Sportsman's License (includes saltwater fishing, hunting, and freshwater fishing licenses; and snook, lobster, wildlife management area, archery, muzzleloading gun, crossbow, deer, turkey, and Florida waterfowl permits; sold only at tax collector's office; not available as 5-year; only available to resident retired and resident active duty military)	\$20.00
<b>Nonresident Saltwater Fishing Licenses</b>	
<b>Type of License</b>	<b>Fee</b>
Annual License	\$47.00
3-Day License	\$17.00
7-Day License	\$30.00
<b>Lobster Permit</b>	
<b>Type of Permit</b>	<b>Fee</b>
Annual <b>Permit</b> (Available for residents and nonresidents)	\$5.00
5-Year <b>Permit</b> (Available for residents only)	\$25.00

The commercial spiny lobster fishing season runs from August 6 to March 31; however, there is no daily bag limit for commercial spiny lobster fishermen using traps.<sup>3</sup> Commercial spiny lobster fishermen must possess a valid Saltwater Products License (SPL).<sup>4</sup> A saltwater product is defined as any species of saltwater fish, marine plant, or echinoderm, except shells, and salted, cured, canned, or smoked seafood.<sup>5</sup>

There are three types of SPLs in Florida:

- Individual SPL – This license authorizes one person to engage in commercial fishing activities from the shore or a vessel, is issued in the individual's name, and is not tied to any one vessel.<sup>6</sup>
- Crew SPL – This license is the same as an individual SPL, but also authorizes each person who is fishing with the named individual aboard a vessel to engage in such activities. This allows the license holder to take a crew on any vessel and that crew is covered under the person's SPL.<sup>7</sup>
- Vessel SPL – This license is issued to a valid commercial vessel registration number and authorizes each person aboard that registered vessel to engage in commercial saltwater fishing activities. This is issued to a vessel, not a named individual.<sup>8</sup>

The annual fee for each type of SPL is dependent on whether the SPL is issued to a resident, a nonresident, or an alien. The fees are as follows:

<b>Saltwater Products Licenses</b>	<b>Fee</b>
Individual Resident	\$50
Individual Nonresident	\$200
Individual Alien	\$300
Crew Resident	\$150
Crew Nonresident	\$600
Crew Alien	\$900

<sup>3</sup> For those in the dive fishing industry using bully nets, the commercial daily bag limit is 250.

<sup>4</sup> Section 379.361, F.S.

<sup>5</sup> Section 379.101, F.S.

<sup>6</sup> *Supra* at 4.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

Vessel Resident	\$100
Vessel Nonresident	\$400
Vessel Alien	\$600

A restricted species (RS) endorsement is required for those who possess an SPL and commercially harvest or sell the following species: Spanish mackerel, king mackerel, black drum, spotted sea trout, grouper, snapper, red porgy, gray triggerfish, banded rudderfish, almaco jack, golden tilefish, amberjack, sea bass/tropical/ornamental “marine life,” black mullet, silver mullet, bluefish, hogfish, blue crab, stone crab, crawfish/spiny lobster, African pompano, Florida pompano, permit, sheepshead, tripletail, clams (Brevard County only), shrimp, flounder, cobia, wahoo, and dolphin.<sup>9</sup>

An RS endorsement is free; however, licensed commercial fishermen, firms, or corporations must qualify or show proof of landings reported under their SPL providing that a specified amount or percentage of their total annual income (\$5,000 or 25 percent) during one of the past three years is attributable to reported landings and sales of saltwater products to a Florida wholesale dealer.<sup>10,11</sup>

A commercial spiny lobster fisherman must also possess one of the following endorsements to harvest lobster commercially:

- **Spiny lobster endorsement** – This endorsement allows fishermen to harvest lobsters with traps or bully nets. The use of traps requires trap certificates, which may be purchased or transferred from another harvester, and the purchase of current year trap tags from FWC. A current year trap tag must be permanently affixed to each trap that is used on or in state waters. There is no daily bag limit for lobsters harvested commercially with traps under this endorsement. A daily vessel limit of 250 spiny lobsters applies when lobsters are harvested using bully nets under this endorsement.<sup>12</sup>
- **Lobster dive endorsement** – This endorsement is required to harvest lobster in commercial quantities by diving, and can only be issued on a single vessel SPL. There is a 250 lobster per day vessel limit that is applied in Broward, Dade, Monroe, Collier, and Lee counties and adjoining federal waters when lobsters are harvested by diving under this endorsement. Trap certificates may not be held by a person with this endorsement. These endorsements are only issued to those who held a dive endorsement in 2004-2005.<sup>13</sup>

The cost of a spiny lobster endorsement for applicants who hold trap certificates is \$125. The cost is \$100 for applicants who do not hold trap certificates, which are those applicants harvesting lobsters with only a bully net or by diving pursuant to the lobster dive endorsement.

<sup>9</sup> Rule 68B, F.A.C.

<sup>10</sup> Section 379.361, F.S., and FWC 2014 analysis. On file with staff.

<sup>11</sup> Section 379.361(2)(b), F.S., provides certain exceptions from the income requirements.

<sup>12</sup> FWC 2014 analysis. On file with staff.

<sup>13</sup> *Id.*

## Spiny Lobster Trap Certificate Program

In 1992, the Legislature created the Lobster Trap Certificate Program<sup>14</sup> in response to concerns about the rapid growth of the lobster trap fishery, which had resulted in increased congestion and conflict on the water, excessive mortality of undersized lobsters, a declining yield per trap, and public concern over petroleum and debris pollution from existing traps. The goal of this program was to solve these and related problems by reducing the number of traps while stabilizing the fishery.

The Lobster Trap Certificate Program controls the number of traps in the lobster fishery using trap certificates that are issued to individual lobster fishermen by the FWC. Fishermen may use one lobster trap for each certificate they own. A tag comes with every certificate and must be attached to the respective trap. There is an annual \$1 fee per certificate.

The FWC is authorized to implement a trap retrieval program for the retrieval of spiny lobster and stone crab traps remaining in the water during the closed season for each species.<sup>15</sup> Trap owners are charged a retrieval fee of \$10 per trap. Traps recovered under this program become the property of the FWC or its contract agent and must be destroyed or resold to the original owner. The revenue from retrieval fees is deposited into the Marine Resources Conservation Trust Fund and is used solely for operation of the trap retrieval program.

Payment of all assessed retrieval fees must be received by the FWC prior to renewal of the trap owner's SPL and stone crab or crawfish endorsements. Retrieval fees assessed under this program stand in lieu of other penalties imposed for such trap violations.

### **Penalties**

Currently,<sup>16</sup> any person, firm, or corporation who violates any provision of chapter 379, F.S., or any rule of the FWC relating to the conservation of marine resources is punished:

- Upon a first conviction, by imprisonment for not more than 60 days or by a fine of not less than \$100 or more than \$500, or by both such fine and imprisonment.
- Upon a second or subsequent conviction within 12 months, by imprisonment for not more than 6 months or by a fine of not less than \$250 or more than \$1,000, or by both such fine and imprisonment.

A court can assess additional penalties against any commercial harvester convicted of major violations. For a violation involving more than 100 illegal blue crabs, spiny lobsters, or stone crabs, an additional penalty of \$10 for each illegal blue crab, spiny lobster, stone crab, or part thereof is imposed.

In addition, the FWC has the discretion to constitute the illegal taking of spiny lobsters as a separate and distinct violation or as one violation no matter how many spiny lobsters or stone crabs have been taken.

### **Effect of Proposed Changes**

The bill prohibits the possession of spiny lobster during the closed season or, while on the water, being in possession of spiny lobster tails that have been wrung or separated from the body, unless the possession is allowed by FWC rule. Any person, firm, or corporation that violates this provision is subject to the following penalties:

- **A first violation-** misdemeanor of the second degree.<sup>17</sup> If the violating involves 25 or more lobster, the violation is a misdemeanor of the first degree.

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<sup>14</sup> See s. 379.3671, F.S.

<sup>15</sup> Section 379.368, F.S.

<sup>16</sup> Section 379.407, F.S.

- **A second violation-** misdemeanor of the first degree<sup>18</sup> and such person is subject to a suspension of all license privileges for a period not to exceed 90 days.
- **A third violation-** misdemeanor of the first degree<sup>19</sup> with a mandatory minimum term of imprisonment of 6 months. The violator may be assessed a civil penalty of up to \$2,500 and is subject to a suspension of all license privileges for a period not to exceed 6 months.
- **A third violation within 1 year after a second violation-** felony of the third degree<sup>20</sup> with a mandatory minimum term of imprisonment of 1 year. The violator must be assessed a civil penalty of \$5,000 and all license privileges must be permanently revoked.
- **A fourth or subsequent violation-** felony of the third degree<sup>21</sup> with a mandatory minimum term of imprisonment of 1 year. The violator must be assessed a civil penalty of \$5,000 and all license privileges must be permanently revoked.

Lastly, the bill amends s. 379.401, F.S., to conform a cross-references.

#### B. SECTION DIRECTORY:

**Section 1.** Amends s. 379.407, F.S., relating to penalties for certain violations relating to spiny lobsters.

**Section 2.** Amends s. 379.401, F.S., conforming a cross-reference.

**Section 3.** Provides an effective date of July 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

The bill may have a negative fiscal impact on state courts and a negative prison bed impact on the Department of Corrections because of the increased prison terms established in the bill.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill could have a potentially insignificant negative fiscal impact on violators who commit multiple offenses.

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<sup>17</sup> Pursuant to ss. 775.082 and 775.083, F.S., a second degree misdemeanor is punishable by imprisonment not to exceed 60 days and a fine not to exceed \$500.

<sup>18</sup> Pursuant to ss. 775.082 and 775.083, F.S., a first degree misdemeanor is punishable by imprisonment not to exceed 1 year and a fine not to exceed \$1,000.

<sup>19</sup> *Id.*

<sup>20</sup> Pursuant to ss. 775.082 and 775.083, F.S., a third degree felony is punishable by imprisonment not to exceed 5 years and a fine not to exceed \$5,000.

<sup>21</sup> *Id.*

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create a need for rulemaking or require additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 14, 2014, the Agriculture & Natural Resources Subcommittee amended and passed HB 47 favorably as a committee substitute (CS). The CS prohibits the possession of spiny lobster during the closed season or, while on the water, being in possession of spiny lobster tails that have been wrung or separated from the body, unless the possession is allowed by FWC rule. Any person, firm, or corporation that violates this provision is subject to the following penalties:

- **A first violation-** misdemeanor of the second degree. If the violating involves 25 or more lobster, the violation is a misdemeanor of the first degree.
- **A second violation-** misdemeanor of the first degree and such person is subject to a suspension of all license privileges for a period not to exceed 90 days.
- **A third violation-** misdemeanor of the first degree with a mandatory minimum term of imprisonment of 6 months. The violator may be assessed a civil penalty of up to \$2,500 and is subject to a suspension of all license privileges for a period not to exceed 6 months.
- **A third violation within 1 year after a second violation-** felony of the third degree with a mandatory minimum term of imprisonment of 1 year. The violator must be assessed a civil penalty of \$5,000 and all license privileges must be permanently revoked.
- **A fourth or subsequent violation-** felony of the third degree with a mandatory minimum term of imprisonment of 1 year. The violator must be assessed a civil penalty of \$5,000 and all license privileges must be permanently revoked.

The CS amends s. 379.401, F.S., to conform a cross-reference.

This analysis is drafted to the CS as passed by the Agriculture & Natural Resources Subcommittee.